

REMARKS/ARGUMENTS

Claims 29-48 and 85-112 are pending in the application. Applicants' acknowledge the withdrawal of the rejection under 35 U.S.C. §103(a) regarding Florin-Robertsson *et al.* (WO 94/15584) and Ron *et al.* (U.S. Patent No. 5,597,897). Reconsideration of the claims is respectfully requested in view of the following remarks. The Examiner's comments in the Office Action are addressed below in the order set forth therein.

The Provisional Obviousness-Type Double Patenting Rejection Should Be Withdrawn

Claims 29-48 and 85-112 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 10-14, 16, 17, 18, and 20 of copending, commonly owned Application No. 09/187,661. This provisional rejection is respectfully traversed.

Applicants maintain that the compositions of the present invention are patentably distinct from the compositions claimed in copending Application No. 09/187,661, for all of the reasons made of record. Furthermore, the pending claims are free of the art. The only remaining rejection is this provisional obviousness-type double patenting rejection. Applicant notes that copending Application No. 09/187,661 was not in condition for allowance at the time the present Office Action was mailed, i.e., August 18, 2003. In fact, a review of the public PAIR system on the U.S. Patent and Trademark Office website reveals that the present Examiner mailed a non-final Office Action in the copending application as late as September 26, 2003. See Appendix A attached hereto. So in fact, the present application was in condition for allowance, with the exception of the provisional double-patenting rejection, as of the August 18, 2003 mailing date of the present Office Action, which date coincided with a time at which the copending application was not in condition for allowance.

In accordance with the MPEP, where the Examiner has become aware of two copending applications filed by different inventive entities having a common assignee, the following procedural steps are to be applied:

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent."

MPEP 804.I.B. Thus Applicants respectfully contend that the present Office Action should not have been mailed; rather, the provisional double patenting rejection should have been withdrawn and a Notice of Allowance mailed. Accordingly, Applicants respectfully request the Examiner to withdraw the provisional double patenting rejection, and to move this application to allowance.

CONCLUSION

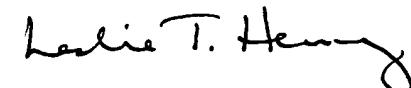
In view of the foregoing remarks, Applicants respectfully submit that the provisional obviousness-type double patenting rejection is overcome. Accordingly, the present application is now in condition for allowance. Early notice to this effect is solicited. If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject Application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of

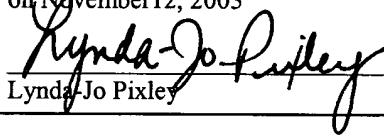
Appl. No.: 09/188,051
Filed: November 6, 1998
Page 4

this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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<p>CUSTOMER NO. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260</p>	<p>CERTIFICATE OF MAILING</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 12, 2003</p>  <p>_____ Lynda Jo Pixley</p>
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